

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper 74

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Entered
16 November 1999

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ANDREAS WINTER, FRANK KUEBER, WALTER SPALECK,
HERBERT RIEPL, WOLFGANG A. HERRMANN,
VOLKER DOLLE and JUERGEN ROHRMANN,

Junior Party,
(Patent 5,455,365),

v.

TAKASHI FUJITA, TOSHIHIKO SUGANO and HIDESHI UCHINO,

Senior Party
(Application 08/678,686).

Patent Interference No. 104,283

Before: McKELVEY, Senior Administrative Patent Judge, and
SCHAFFER and TORCZON, Administrative Patent Judges.

FINAL JUDGMENT

Upon consideration of the MEMORANDUM IN SUPPORT OF FINAL
JUDGMENTS (Paper 73), and for the reasons given therein, it is

ORDERED that Winter Preliminary Motion 1 is denied.

FURTHER ORDERED that Winter Preliminary Motion 2 is denied.

FURTHER ORDERED that Winter Preliminary Motion 3 is dismissed.

FURTHER ORDERED that Fujita Rule 635 Motion to strike Winter Reply 1 is denied.

FURTHER ORDERED that Winter Rule 635 Motion for leave to file Winter Preliminary Motion 4 is denied.

FURTHER ORDERED that Fujita Rule 635 Motion 2 for leave to file a declaration of Dr. Tobin Marks is dismissed.

FURTHER ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against junior party Andreas Winter, Frank Kueber, Walter Spaleck, Herbert Riepl, Wolfgang A. Herrmann, Volker Dolle and Juergen Rohrmann.

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of senior party Takashi Fujita, Toshihiko Sugano and Hideshi Uchino.

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, senior party Takashi Fujita, Toshihiko Sugano and Hideshi Uchino is entitled to a

patent containing claims 8-14 and 16 (corresponding to Count 1) of application 08/678,686, filed 11 July 1996.

FURTHER ORDERED that junior party Andreas Winter, Frank Kueber, Walter Spaleck, Herbert Riepl, Wolfgang A. Herrmann, Volker Dolle and Juergen Rohrmann is not entitled to a patent containing claims 1-6 (corresponding to Count 1) of U.S. Patent 5,455,365, granted 3 October 1995, based on application 08/101,408, filed 3 August 1993.

FURTHER ORDERED that the Clerk is directed to place a copy of the MEMORANDUM IN SUPPORT OF FINAL JUDGMENTS and this FINAL JUDGMENT in the file of the Spaleck patent, the file of the Spaleck reissue application and the file of the Fujita application.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

_____)	
FRED E. McKELVEY, Senior)	
Administrative Patent Judge)	
)	
)	
_____)	
RICHARD E. SCHAFER)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
_____)	

RICHARD TORCZON)
Administrative Patent Judge)

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